

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA  
9

10 THE BANK OF NEW YORK MELLON,  
11 Plaintiff(s),

Case No.: 2:16-cv-00549-APG-NJK

12 v.

**Order**

13 TERRA BELLA OWNERS ASSOCIATION  
14 INC., et al.,  
Defendant(s).

15 Pending before the Court is a Stipulated Protective Order, which the Court approved to  
16 facilitate discovery in this case. This order reminds counsel that there is a presumption of public  
17 access to judicial files and records. A party seeking to file a confidential document under seal  
18 must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City*  
19 *and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

20 The Court has adopted electronic filing procedures. Attorneys must file documents under  
21 seal using the Court's electronic filing procedures. *See* Local Rule IA 10-5. Papers filed with the  
22 Court under seal must be accompanied with a concurrently-filed motion for leave to file those  
23 documents under seal. *See* Local Rule IA 10-5(a).

24 The Court has approved the blanket protective order to facilitate discovery exchanges. But  
25 **there has been no showing, and the Court has not found, that any specific documents are**  
26 **secret or confidential**. The parties have not provided specific facts supported by declarations or  
27 concrete examples to establish that a protective order is required to protect any specific trade secret  
28 or other confidential information pursuant to Rule 26(c) or that disclosure would cause an

1 identifiable and significant harm. The Ninth Circuit has held that there is a presumption of public  
2 access to judicial files and records, and that parties seeking to maintain the confidentiality of  
3 documents attached to nondispositive motions must show good cause exists to overcome the  
4 presumption of public access. *See Kamakana* 447 F.3d at 1179. Parties seeking to maintain the  
5 secrecy of documents attached to dispositive motions must show compelling reasons sufficient to  
6 overcome the presumption of public access. *Id.* at 1180. **All motions to seal must address the**  
7 **applicable standard and explain why that standard has been met.** The fact that a court has  
8 entered a blanket stipulated protective order and that a party has designated a document as  
9 confidential pursuant to that protective order does not, standing alone, establish sufficient grounds  
10 to seal a filed document. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th  
11 Cir. 2003); *see also Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

12 If the sole ground for a motion to seal is that the opposing party (or non-party) has  
13 designated a document as subject to protection pursuant to the stipulated protective order, the  
14 movant must notify the opposing party (or non-party) at least seven days prior to filing the  
15 designated document. The designating party must then make a good faith determination if the  
16 pertinent standard for sealing is met. To the extent the designating party does not believe the  
17 pertinent standard for sealing can be met, it shall indicate that the document may be filed publicly  
18 no later than four days after receiving notice of the intended filing. To the extent the designating  
19 party believes the pertinent standard for sealing can be met, it shall provide a declaration  
20 supporting that assertion no later than four days after receiving notice of the intended filing. The  
21 filing party shall then attach that declaration to its motion to seal the designated material. If the  
22 designating party fails to provide such a declaration in support of the motion to seal, the filing  
23 party shall file a motion to seal so indicating and the Court may order the document filed in the  
24 public record.<sup>1</sup>

---

25  
26 <sup>1</sup> In the event of an emergency motion or other instances of expedited briefing, the above  
27 procedures shall not apply. Instead, the movant shall file a motion to seal and the designating party  
28 shall file a declaration in support of that motion to seal within three days of its filing. If the  
designating party fails to timely file such a declaration, the Court may order the document filed in  
the public record.

1       **IT IS ORDERED** that counsel shall comply with the requirements of Local Rule IA 10-  
2 5, the Ninth Circuit's decision in *Kamakana*, 447 F.3d 1172, and the procedures outlined above,  
3 with respect to any documents filed under seal. To the extent any aspect of the stipulated protective  
4 order may conflict with this order or Local Rule IA 10-5, that aspect of the stipulated protective  
5 order is hereby superseded with this order.

6       IT IS SO ORDERED.

7       Dated: December 13, 2018

8  
9         
10       \_\_\_\_\_  
11       Nancy J. Koppe  
12       United States Magistrate Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28